

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6203 OF 2016

Cosmos Cooperative Housing Society Ltd. ... Petitioner
Vs.
Champalal Ghisulal Saklecha & Ors. ... Respondents

Mr. Manaswi Agrawal I/b. Charles J. D'souza, Advocate for the petitioner.

Mr. Chetan Agrawal, Advocate for the respondent nos. 1 to 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **8th August, 2018.**

P.C.:

Upon mentioning, taken on production board.

2. Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally at the stage of admission.

3. In this Writ Petition, the order dated 6th October, 2015 passed by the learned Adhoc District Judge-1, Pune below Exhibit 47 in Civil Appeal No. 453 of 2006 is under challenge.

4. The petitioner/appellant, who is plaintiff-Society, has filed the suit for declaration and mandatory injunction against the respondents. There is a issue of title. The suit was dismissed on

27th February, 2006 against which the Appeal is filed and in the said Appeal, the petitioner/society moved an Application under Order 41 Rule 27 of the Code of Civil Procedure for adducing additional documentary evidence, i.e., certified copies of Index-II. The said Application was rejected. Hence, this Writ Petition.

5. The learned counsel for the petitioner submitted that this document is very important and at the time of suit, the petitioners were not aware whether his title can be proved on the basis of Index-II or not. As the document is obtained, he has moved the Application for adducing additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. He submitted that it is a very material document.

6. Per contra, the learned counsel for the respondent, while opposing this Petition, has argued that there is inordinate delay in obtaining the Application so also in filing this Application at the Appellate stage, as the suit is dismissed in the year 2006. The learned counsel submitted that the respondents have never entered into any registered sale deed with the plaintiff-society and Index-II cannot be construed as a result of such registered sale deed and therefore, the said document is not to be allowed in Appeal.

7. Considered the relief prayed in the plaint, application, submissions made by the learned counsel. As the prayer of declaration of title is made, documentary evidence of Index-II is a material evidence, so it is to be allowed even at the Appellate stage, however, the contentions of the respondent challenging the said document and other related facts is kept open. The evidentiary value of the document is to be independently assessed by the Appellate Court to decide the title of the petitioners.

8. Writ Petition is disposed of.

9. The learned counsel for the respondents orally prays for stay of this order, as the respondents wants to challenge this order before the Hon'ble Supreme Court.

10. As the learned counsel for the respondents wants to challenge this order before the Supreme Court, the operation of this order is stayed for a period of 4 weeks from today.

(MRIDULA BHATKAR, J.)